

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC SUPPORT SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL 2325

Linda Berrryhill, et al. v. American Medical Systems, Inc.

2:13-cv-023072

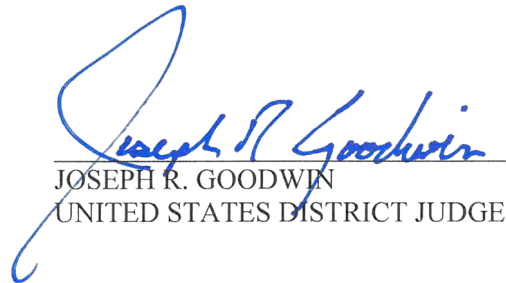
MEMORANDUM OPINION AND ORDER

Pending is a Motion to Dismiss Plaintiff Linda Berryhill's Complaint with Prejudice for Failure to Comply with Pre-Trial Order #274, filed March 13, 2019. [ECF No. 10]. Plaintiff has not responded to this motion or any of the other various motions on the docket. The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), plaintiff Linda Berryhill should be dismissed without prejudice for failure to serve the Plaintiff Fact Sheet in compliance with the court's previous pretrial and other orders.

Therefore, the court **ORDERS** that the motion to dismiss [ECF No. 10] is **GRANTED in part** to the extent AMS seeks dismissal of Ms. Berryhill and **DENIED in part** insofar as AMS seeks dismissal with prejudice of the entire case. The court **ORDERS** that Ms. Berryhill is dismissed without prejudice. The case must remain open, as Mr. Berryhill remains as a plaintiff. The court further **ORDERS** that the motions at ECF Numbers 12 and 14 are **DENIED** as moot in light of the dismissal of Ms. Berrryhill.

The court **DIRECTS** the Clerk to send a copy of this order to counsel of record and plaintiff at her last known address.

ENTER: June 12, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE